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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1931

No. 137

MATSON NAVIGATION COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 5, 1931

CERTIORARI GRANTED OCTOBER 12, 1931

(35,951)

(35,951)

SUPREME COURT OF THE UNITED STATES

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MATSON NAVIGATION COMPANY, PETITIONER,

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 9, 1931

[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 137

MATSON NAVIGATION COMPANY, a Corporation, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The petition of Matson Navigation Company respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

On April 6, 1931, the Court of Claims made its decree dismissing a petition of Matson Navigation Company (hereinafter referred to as "The Matson Company") upon the ground that the Court was without jurisdiction to hear the cause. On May 11, 1931, the Court of Claims filed a new decree and opinion containing a finding of the facts upon which the decree was based.

The action was commenced by a petition which claimed a balance due to the Matson Company from the United States upon a mutual, open, current and running account in the sum of $49,373.11. This account arose out of the following transactions which are described by the petition:

[fol. 2] Acting on behalf of the United States by authority of an Act of June 15, 1917, entitled "Urgent-Deficiencies Appropriations Act" (40 Stat. L. 182, Ch. 29), and an Executive Order of the President promulgated thereunder, the United States Shipping Board, on October 15, 1917, issued an order requisitioning American cargo vessels of certain classes. Among the vessels so requisitioned were seven steamships then owned and operated by The Matson

Company. The Matson Company promptly delivered these seven vessels to the United States. The United States used the vessels until the early part of 1919, when they were returned to the owner.

On December 29, 1917, the United States and The Matson Company entered into seven separate agreements which provided for liquidation of the just compensation to be paid for the use of the vessels. Each of these agreements provided two separate standards of compensation. One standard was applicable while vessels were operated by the owner for the United States, the other while the vessels were not so operated. Each of the petitioner's vessels were to be operated by it for the United States. Under the agreements, the compensation to be paid by the United States for the use of the vessels consisted in part of pay at a rate to be established from time to time by the United States Shipping Board and in part of the amount of all increased wages and bonuses paid to the master, officers and crew of each vessel in excess of standard prevailing on August 1, 1917.

The Matson Company also represented the United States in the management of these and other vessels.

From the date of the seizure of these vessels until December of 1922, the petitioner and the United States Ship- [fol. 3] ping Board maintained a mutual, open, current and running book account, wherein there was credited to the petitioner and charged to the United States, from time to time, various sums, including the just compensation to which the petitioner was entitled for the use of its vessels, and wherein there was credited to the United States and charged to the petitioner various other sums, including all revenue arising from the operation of the vessels.

After December of 1922, pursuant to the provisions of the Merchant Marine Act of 1920 (41 Stats. L. 988), the United States Shipping Board and the petitioner negotiated for the settlement of this account. The account was finally settled on October 18, 1926. At that time the petitioner received payment of the balance of the account except the sum of $49,373.11, which is here in dispute and which represents credits which the Shipping Board then decided had been improperly made to the petitioner but which the petitioner claimed to have been properly credited as compensation for the use of its vessels while under

requisition. The amount in dispute was measured by the proper increases, over the standard prevailing on August 1, 1917, in wages and bonuses which had been paid to the master, officers and crew of each of the requisitioned vessels.

The final settlement of the account between The Matson Company and the United States was evidenced by a written agreement dated October 18, 1926, which specifically saved and reserved to The Matson Company all of its claims and demands for this balance of $49,373.11 which it claimed from the United States.

The petition of The Matson Company in the Court of [fol. 4] Claims seeking to recover this amount was filed on April 6, 1927. On the following day The Matson Company filed in the United States District Court for the Northern District of California (Southern Division) seven actions in each of which The Matson Company sought to recover judgment for the balance of hire due from the United States for the use of one of its seven vessels.

Upon motion of the defendant the proceeding in the Court of Claims was dismissed on the ground that the Court of Claims had no jurisdiction to hear the cause.

The decree of the Court was based upon an Act of Congress (U. S. C. A. Title 28, Sec. 260; Judicial Code, Sec. 154), which provides as follows:

"No person shall file or prosecute in the Court of Claims or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person, who at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States."

Reasons for the Allowance of the Writ

(1) The Court's decree is erroneous because it is based upon an erroneous construction of the Statute.

The action pending in the Court of Claims was one in which the United States itself was defendant. In each action pending in the District Court of the United States the United States itself was also the sole defendant. The

Statute prohibits the prosecution of an action in the Court of Claims only when there is pending in any other court any suit

"against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States."

[fol. 5] No action has ever been filed in connection with the subject of this litigation against any person whomsoever. The actions pending are all against the United States. There is no statutory prohibition against filing more than one proceeding against the United States.

The Court of Claims has construed this statute as prohibiting the maintenance of two actions against the United States when, in fact, the statute contains no such provision. The Court of Claims holds that:

"The whole object and intent of the Act of 1868 were to prevent the government from being sued in separate jurisdictions on the same cause of action and to make the plaintiff elect in which Court to sue."

The Statute discloses no such intent and contains no such provision. The Act does not refer to suits against the United States in other jurisdictions or other courts. It does not refer to any election with reference to the forum.

It is submitted that the Court of Claims has decided an important question of law in a way which is wholly untenable.

(2) The construction placed by the Court of Claims upon the Statute in question violates the principles that statutory language must be construed in its natural, plain and ordinary signification and that a departure from this plain meaning is unjustified. The Statute prohibits the prosecution of a proceeding in the Court of Claims only when other proceedings are pending against persons acting under the authority of the United States. The language is clear. It cannot apply or refer to proceedings pending against the United States itself.

(3) The Court of Claims construes this Statute in a manner which conflicts with applicable decisions of this [fol. 6] Court; its decision violates the principle that in the construction of a statute *expressio unius est exclusio alterius* and that an enumeration of matters upon which a statute shall operate excludes all others. The Act of Congress expressly designates proceedings to which it refers, to wit: proceedings pending in other courts against persons acting under the authority of the United States. A designation of this class of persons excludes the United States itself.

(4) The Court of Claims erroneously held that:

"If the Court of Claims is deprived of jurisdiction when a suit is filed on the same cause of action in another court against any person who, at the time the cause of action arose, was acting or claiming to act under the authority of the United States, *a fortiori*, would it be true where the suit was brought against the United States on the same cause of action in another court and also in the Court of Claims."

This statement wholly ignores the well-settled rule established by the decisions of this court, that a judgment rendered in an action against an agent or officer of the United States, unlike a judgment rendered in an action against the United States itself, is not *res adjudicata* in a subsequent action to which the United States is a party. Suits against individuals acting under the authority of the United States are in a wholly separate and distinct category from suits against the United States itself. The rules applicable to the former category do not, *a fortiori* or otherwise, apply in the latter.

(5) The Court of Claims erroneously stated:

"The Government must defend the suits in two jurisdictions, and the whole aim of the statute was to prevent two trials of the same cause of action in separate jurisdictions."

This statement by the Court of Claims erroneously attributes to the Statute an aim which is foreign to its real [fol. 7] purpose and ignores the well-settled doctrine of

res adjudicata. A judgment for the Government and against an individual upon a claim of the latter creates a bar by estoppel in any subsequent proceeding involving the same issues and relieves the government of any need to again defeat the claim.

(7) The construction placed by the Court of Claims upon this statute not only ignores the language of the Act of Congress but also its legislative history (Congressional Globe, Second Session, Fortieth Congress, p. 2769), which shows that the purpose of Congress was to accomplish exactly what the Act provides and nothing more.

The decision of the Court of Claims involves the jurisdiction of that court and the construction of the Act of Congress defining the same, and the case is, therefore, one of general interest and importance. The opinion is based upon a supposed doctrine of *res adjudicata,* which is at variance with the decisions of this court, as well as with the prior decisions of the Court of Claims. The decision of the Court of Claims would compel a citizen who was in doubt as to the proper forum in which to sue the United States to select one of the available forums and, pending the settlement of the question of jurisdiction, would prevent him from protecting his right in any other forum. This right would be taken from the claimant without any legislative justification of sanction whatever.

Wherefore your petitioner prays that this Honorable Court grant a writ of certiorari in this case, directed to the Court of Claims, to the end that this cause may be brought up to this Honorable Court in such proceedings as to this Honorable Court may seem proper and appropriate and that the said decree of the Court of Claims may be reversed by this Honorable Court and that your petitioners may [fols. 8 & 9] have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Dated San Francisco, California, June 2nd, 1931.

Matson Navigation Company, by Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, Attorneys for Petitioner. M. A. Crum, William G. Feely, of Counsel.

[fol. 1] IN THE COURT OF CLAIMS

No. H-137

MATSON NAVIGATION COMPANY (a Corporation)

vs.

UNITED STATES OF AMERICA

I. PETITION—Filed April 6, 1927

To the Honorable the Court of Claims:

The petition of Matson Navigation Company respectfully shows:

I

That said claimant is, and was at all times herein mentioned, a corporation duly organized and existing under and pursuant to the laws of the State of California, and having its principal place of business in the City and County of San Francisco, State of California;

II

That said claimant is, and was at all times herein mentioned, engaged in the business of transporting passengers and goods between points on the Pacific Coast of the mainland of the United States and points in the Hawaiian Islands, and in its said business said claimant has at all times herein mentioned owned and operated the following named vessels, each over 2500 tons burden, to wit: "Mat-
[fol. 2] sonia", "Maui", "Wilhelmina", "Manoa", "Lurline", "Enterprise" and "Hyades";

III

That on June 15, 1917, an act of Congress entitled "Urgent-Deficiencies Appropriation Act" (40 Stat. L. 182, Ch. 29) was approved; that a section of said act entitled "Emergency Shipping Fund" authorized and empowered the President of the United States to purchase, requisition or take over the title to, or the possession of, for the use or operation by the United States, any vessel then constructed or in the course of construction; that said act

further provided that the powers of the President conferred upon him by the terms thereof might be exercised through such agency or agencies as the President should determine from time to time;

IV

That pursuant to said authority contained in said statute the President of the United States duly promulgated on the 11th day of July, 1917, an executive order wherein and whereby the said President directed that the United States Shipping Board should have and exercise all of the powers and authority conferred upon the President in and by the terms of said section of said act, so far as applicable to, and in furtherance of, the taking over of title or possession by purchase and requisition of constructed vessels or parts thereof, or charters therein;

V

That on the 15th day of October, 1917, the United States Shipping Board, pursuant to the authority delegated to it by said executive order, requisitioned for use by the United States, all of said claimant's vessels of over 2500 tons burden then in port in the United States, and requisitioned all such vessels of the claimant not in port in the United States upon their arrival thereafter; that the vessels of claimant hereinbefore named were requisitioned by the United States, so acting by and through the United States [fol. 3] Shipping Board, on the following dates, to wit: the "Matsonia" on October 27, 1917; the "Maui" on October 13, 1917; the "Wilhelmina" on November 5, 1917; the "Manoa" on November 16, 1917; the "Lurline" on October 29, 1917; the "Enterprise" on October 17, 1917; and the "Hyades" on November 13, 1917;

VI

That on the 29th day of December, 1917, the United States of America, acting by and through the United States Shipping Board, entered into seven separate requisition charters in writing with the claimant, in and by each of which said requisition charters the compensation to be paid to the claimant for the use of said vessels by the United

States as aforesaid was fixed; that each of said requisition charters was in the form hereunto annexed, marked Exhibit "A", which is hereby expressly referred to and made a part of this petition;

VII

That the said vessels so requisitioned by the defendant were returned to the claimant on the following dates, to wit: the "Matsonia" on September 17, 1919; the "Maui" on September 8, 1919; the "Wilhelmina" on August 16, 1919; the "Manoa" on April 4, 1919; the "Lurline" on January 31, 1919; the "Enterprise" on January 17, 1919; and the "Hyades" on April 13, 1919;

VIII

That in and by the terms of said requisition charters the defendant agreed to pay to claimant for the use of each such vessel at a monthly rate which would thereafter be established from time to time by the United States Shipping Board and in addition thereto, to reimburse the owner for any proper increases in wages and bonuses over the standard prevailing August 1, 1917, for master, officers and crew, the owner to produce satisfactory evidence of such increases in wages or bonuses;

[fol. 4]

IX

That the United States Shipping Board did thereafter establish the rate of hire for each such steamship; that subsequent to August 1, 1917, there were proper increases in wages and bonuses over the standard prevailing August 1, 1917, and that claimant furnished to the United States Shipping Board satisfactory evidence thereof;

X

That subsequent to the said requisition of said vessels by defendant, the defendant having then in its possession many vessels and desiring to arrange for the management and operation thereof, entered into two certain contracts with the claimant; that in and by the terms of one of said contracts hereinafter referred to as the managing contract,

defendant acting by and through the United States Shipping Board Emergency Fleet Corporation, appointed the claimant as its agent for the husbanding and managing of certain vessels; and in and by the other of said contracts, hereinafter referred to as the operating contract, the defendant, acting by and through the United States Shipping Board Emergency Fleet Corporation, appointed the claimant as its agent for the operation of certain of said vessels; that in and by each of said operating contract and managing contract it was provided that the claimant should receive compensation in accordance with rates to be fixed from time to time by the United States Shipping Board; that in and by each of said managing contract and operating contract it was also provided that the claimant should among other things, hold, on behalf of the defendant, all moneys collected on its behalf; that the said United States Shipping Board would thereafter fix the compensation to be paid to the claimant pursuant to the terms of said managing agreement and said operating agreement;

XI

That up until the 18th day of October, A. D. 1926, the claimant has from time to time charged to the defendant upon its books the sums due from time to time from the [fol. 5] defendant as the agreed compensation for the use of said vessels, pursuant to the terms of said requisition charters, including the amounts due monthly to the claimant pursuant to the monthly rate fixed by the United States Shipping Board as aforesaid, and also including the sums paid by the claimant to the master, officers and crew of said vessels for proper increases in wages and bonuses over the said rate prevailing August 1, 1917; that the claimant has credited to the defendant upon its books all sums received by claimant as the revenue received by defendant while operating said vessels for the defendant; that the defendant has not paid to the claimant, and did not pay to the claimant until October 26, 1926, any of the sums due to the claimant from time to time by reason of services rendered to the defendant pursuant to said operating agreements, but that the claimant has, from time to time, charged to the defendant upon its books, sums falling due to the claimant by reason of the performance of said services; that all of

said credits and debits entered in the said books of the claimant were carried upon a single account, which said account constituted a mutual, current and running book account between the claimant and the defendant; that during the whole time that said vessels, or any of them, were in the possession of the defendant under said requisition, and during the whole of the time that said claimant was operating said vessels, or any of them, for the defendant, it has been understood between claimant and the defendant that said account constituted a current, mutual and running book account between them, and that the purpose of retaining said moneys received by the claimant was to credit the same against moneys due to the claimant from the defendant on said requisition charters and said commissions, and that when a final balance between the claimant and the defendant was agreed upon the said account would be settled; that the United States Shipping Board has never disputed, but has always confessed, that said account of moneys due to the United States on the one part, and of the said moneys due to the claimant from the United States on the other part, was for the purpose of the payment by one party to [fol. 6] the other of such balance as should be due when all moneys relating to such balance due should have been determined;

XII

That on the 5th day of June, 1920, an act of Congress entitled "Merchant Marine Act, 1920" (41 Stat. L. 988) was approved, and in and by which said act it was provided that the said Urgent-Deficiences Appropriation Act was repealed, subject, among others, to the following limitations:

(1) That all contracts or agreements lawfully entered into before the passage of the act should be acknowledged and carried out by the United States Shipping Board; and

(2) That all rights, interests or remedies accruing, or to accrue, as a result of any such contract or agreement, or of any action taken in pursuance of said act or parts of said act, should be in all respects as valid and enforced in like manner as if this act had not been passed; and

(3) That as soon as practicable after the passage of the act the United States Shipping Board should adjust, settle

and liquidate all matters arising out of, or incident to, the exercise by or through the President of any of the powers or duties imposed upon the President by any such act, or parts of acts; provided, that any person dissatisfied with any decision of the Board should have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under said Urgent-Deficiencies Appropriation Act;

XIII

That the last entry in said current, mutual and running book account between the parties hereto prior to October 18, 1926, is under date of December 20, 1922; that ever since the 15th day of July, 1921, the said United States Shipping Board, acting pursuant to the said last mentioned act of Congress, has been actively engaged in the adjusting, settlement and liquidation of said account between the claimant and the defendant; that pursuant to the said proceedings of the said United States Shipping Board to ad-[fol. 7] just, settle and liquidate said account with the claimant, and pursuant to negotiations for the adjustment, settlement and liquidation thereof between the claimant and the said United States Shipping Board, the said United States Shipping Board did, on the 18th day of October, 1926, finally adjust, settle and liquidate the balance due to said claimant upon said mutual, open and running book account, with the exception hereinafter described; and on said last named date it was agreed by and between the claimant and the said United States Shipping Board that there was due to the claimant from the defendant on said account, a balance of not less than one hundred thirty-four thousand seven hundred twenty-two and 67/100 dollars ($134,722.67); and that upon the payment of said sum of one hundred thirty-four thousand seven hundred twenty-two and 67/100 dollars ($134,722.67) by the defendant to the claimant, all of the items of said account would be fully paid and satisfied with the exception of that certain item hereinafter described; that on said 18th day of October, 1926, the said United States Shipping Board decided that, in fact, there was due to the claimant from the defendant on said last named date upon said account not more than the sum of one hundred thirty-four thousand seven hun-

dred twenty-two and 67/100 dollars ($134,722.67); and that the claimant is dissatisfied with said decision of the United States Shipping Board, in that there was due to the claimant from the defendant on said last named date upon said account the sum of one hundred eighty-four thousand ninety-five and 78/100 dollars ($184,095.78); that the difference between said sum of one hundred thirty-four thousand seven hundred twenty-two and 67/100 dollars ($134,722.67) so paid to the claimant as aforesaid and the amount due upon said account in the sum of one hundred eighty-four thousand ninety-five and 78/100 dollars ($184,095.78) represented the sums claimed by the claimant to be due to it from defendant pursuant to said provision contained in each of said requisition charters that the defendant would pay to the claimant as additional compensation for the use of said vessels, all sums paid by the claimant for any [fol. 8] proper increases in wages and bonuses over the standard prevailing August 1, 1917, for master, officers and crew; that during the period of time that said vessels were in use by the defendant under the terms of said requisition charters, the claimant paid to the master, officers and crew of said vessels sums for proper increases in wages over the standard prevailing August 1, 1917, in the total sum of forty-nine thousand three hundred seventy-three and 11/100 dollars ($49,373.11), no part of which said sum of forty-nine thousand three hundred seventy-three and 11/100 dollars ($49,373.11) has ever been paid to the claimant; that notwithstanding payment of said increases in wages and bonuses by the claimant the said United States Shipping Board has refused, and still does refuse, to include said sum in the said adjustment, settlement and liquidation of said account;

XIV

That pursuant to said adjustment, settlement and liquidation of said account by said United States Shipping Board the defendant, acting by and through the said United States Shipping Board, and the claimant did, on said 18th day of October, 1926, enter into a certain agreement in writing, a copy of which said agreement is hereunto annexed, marked Exhibit "C" and is hereby expressly referred to and made a part of this petition, in and by the terms of which said agreement said account was finally

adjusted, settled and liquidated in the following manner, that is to say: By the agreement of the parties that the sum of not less than one hundred thirty-four thousand seven hundred twenty-two and 67/100 dollars ($134,722.67) was still due to the claimant upon said account, which said sum was paid to the claimant concurrently with the execution of said agreement; and by the agreement of the parties that the claimant should retain any and all right to recover from the defendant the sum of forty-nine thousand three hundred seventy-three and 11/100 dollars ($49,373.11) paid by the claimant to the master, officers and crew of said vessels for increases in wages and bonuses over the stand-
[fol. 9] ard prevailing August 1, 1917, during the period said vessels were under said requisition charters;

XV

That neither the whole nor any part of said sum of forty-nine thousand three hundred seventy-three and 11/100 dollars ($49,373.11) has ever been paid to said claimant, but that there is still due from the defendant to the claimant said sum of forty-nine thousand three hundred seventy-three and 11/100 dollars ($49,373.11);

XVI

That the claimant is the sole owner of said claim hereinbefore described against the defendant and is the sole person interested therein; and that said claimant became the owner thereof by reason of the facts hereinbefore stated;

XVII

That no assignment of said claim, or any part thereof, or any interest therein, has ever been made by said claimant;

XVIII

That said claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets;

XIX

That said claimant has at all times borne true allegiance to the government of the United States, and has not, at any time, in any way, voluntarily aided, abetted or given en-

couragement to rebellion against the government of the United States;

XX

That the claimant believes the fact hereinbefore stated to be true.

Wherefore the claimant prays for judgment against the defendant in said sum of forty-nine thousand three hundred [fol. 10] seventy-three and 11/100 dollars ($49,373.11), and for such other relief as may be just and proper in the premises.

Matson Navigation Company, by F. A. Bailey, Its Secretary. Brobeck, Phleger & Harrison, Attorneys for Claimant. Vogelsang, Brown, Cram and Feely, of Counsel for Claimant.

[fol. 11] *Duly sworn to by F. A. Bailey. Jurat omitted in printing.*

[fol. 12] EXHIBIT A TO PETITION

Contract Bureau, United States of America

Requisition Charter

This Requisition Charter, made and concluded upon in the District of Columbia the — day of ——, 1917, between —— ——, of ——; of ——, owner of the good American Screw Steamship ——, of ——, of — tons gross register and — tons net register, built in ——, having engines of — nominal horsepower, provided with proper certificate for hull and machinery, and classed —— at —— of about — cubic feet capacity and — tons dead-weight capacity, summer freeboard, inclusive of permanent bunkers, capable of making an average voyage speed when loaded of — knots an hour, under ordinary conditions, on a consumption of about — tons of coal, or about — barrels of oil per 24 hours; and the United States of America, through the United States Shipping Board,

Witnesseth:

Whereas, By Requisition Order, dated —— ——, 1917, pursuant to the Urgent Deficiency Act 15 June, 1917, and

the President's Executive Order 11 July, 1917, the United States has requisitioned the use of the steamship ——, and the steamship has been delivered into possession of the United States pursuant to the Requisition; and

Whereas, it is desired by the United States and by the owner to fix the compensation (hereinafter called hire) which the United States shall pay to the owner for use of the steamship so requisitioned, and to define by agreement the rights and duties of the United States and of the owner with respect to the operation of the vessel under the Requisi- [fol. 13] tion, and with respect to other matters in connection therewith;

Now, therefore, it is agreed as follows:

First. The terms and conditions under which the vessel is to be operated shall be those contained in the "Time Form" hereto annexed; provided, however, that at the time of the Requisition or at any time thereafter, on five days' written notice, the United States may operate the vessel under the terms and conditions contained in the "Bare Boat Form" hereto annexed, such operation to begin when the steamship is in a United States port.

Second. In consideration of the compensation provided and the other obligations assumed by the United States hereunder, the owner accepts this Requisition Charter in full satisfaction of any and all claims he has or may have against the United States arising out of the Requisition and accepts the compensation herein provided for as the just compensation required by law; provided, however, that the acceptance of this Requisition Charter shall be without prejudice to the claim, if any, the owner may have against the United States arising out of recoveries against the owner by third parties on the vessel's commitments.

Third. Upon giving five days' written notice to the owner the United States may at any time, when the vessel is in a United States port, cancel this Requisition Charter without prejudice to the accrued rights of either party.

——— ———, Owner, by ——— ———. The United States Shipping Board, by ——— ———.

Witness to the signature of ——— ———: ——— ———.
Witness to the signature of ——— ———: ——— ———.

[fol. 14] EXHIBIT B TO PETITION

Time Form

Whereas, the United States has determined to deliver possession of the vessel to the owner to be operated by the owner for the United States;

Now, therefore, it is agreed as follows:

Period of Service. Vessel to be Completely Equipped and Fit. Making Good Defects, Operation of Vessel, Wages, etc.

First. The steamship shall remain in the service of United States under the Requisition Order to be employed as and where the United States may from time to time determine and for such period of time as the United States may determine, but such period shall not extend beyond the first arrival of the steamship in an American port six months after peace is declared unless she shall be required for Government purposes. The vessel, when placed at the disposal of the United States, as directed by it, shall be or shall forthwith be made by and at the expense of the owner, tight, staunch, strong, and well and sufficiently tackled, appareled, furnished, outfitted, and equipped, and in every respect seaworthy and in good running order and condition; and shall be fit for the service in which she has usually been employed, having on her delivery United States inspection certificate that she has met all requirements to fit her for the trade in which she is employed at the time of the Requisition, except that no such certificate shall be required if she be a foreign-built vessel not at present subject to the United States Steamboat Inspection laws as provided in the Panama Canal act, as amended 18 August, 1914; and having a full complement, including the master, officers, and crew, for a vessel of her tonnage. Any deficiency in these respects must be remedied forthwith by and at the expense of the owner; and any time lost in remedying any such deficiency is not to be paid for by the United States.

Special Equipment. Complement of Vessel

Second. The owner shall operate the vessel for the United States, shall provide and pay for all provisions, wages,

bonuses, and consular shipping and discharging fees of the master, officers, and crew, and shall provide and pay for all cabin, deck, engine room, and other necessary stores, and [fol. 15] shall maintain the steamship in a thoroughly efficient state in hull and machinery, tackle, apparel, furniture, and equipment during the service. If the service requires any special equipment in addition to that required for the vessel's previous usual service, such equipment shall be provided and paid for by the United States. The ordinary crew as required by law to operate the vessel overseas and in trans-Atlantic service shall be considered a full complement, and any extra men, such as wireless operators, armed guards or others, not required by law for ordinary merchant overseas and trans-Atlantic service, shall be paid for by the United States. The owner shall, however, provide proper subsistence for such extra men at reasonable rates to be fixed by the United States.

Status of Vessel

Third. The vessel, while being so operated by the owner, shall not have the status of a Public Ship, and shall be subject to all laws and regulations governing merchant vessels, and the owner shall take all proper steps to prevent any suit or process from interfering with her service.

When a Public Ship

When, however, the requisitioned vessel is engaged in the service of the War or Navy Department, the vessel shall have the status of a Public Ship, and although the owner shall continue to provide and pay for all the items stated to be provided and paid for by the owner while operating the vessel as provided in clause "Second", the master, officers, and crew shall become the immediate employees and agents of the United States, with all the rights and duties of such, the vessel passing completely into the possession and the master, officers, and crew absolutely under the control of the United States. The owner, master, officers, and crew shall be notified of the commencement and termination of the vessel's employment in the service of the War or Navy Department, and a proper notation shall be made on the ship's Articles prior to the signing thereof, showing that the master, officers and

crew have entered into the service of the United States. Monthly, or as soon as possible after the termination in a United States port of any voyage in the service of the [fol. 16] War or Navy Department, the owner shall furnish the United States as a voucher a statement by the United States Shipping Commissioner which shall certify the dates and amounts of the payment of the wages and bonuses of the master, officers, and crew as the same appear on the completed Articles.

Nationality of Crew

Fourth. So far as practicable, every member of the crew shall be an American citizen, citizens and subjects of enemy or ally of enemy nations always excluded. Full list of crew, with their ratings and nationalities, shall, if required, be produced to the United States at the time of delivery of the vessel or on the entry into the pay of the vessel of such member or members of the crew.

United States Will Provide Fuel, etc.

Fifth. The United States shall provide and pay for all coals or other fuel, fresh water, port charges, pilotages, agencies, commissions, brokerage, wharfage, and consular charges (except those pertaining to the master, officers, and such part of the crew as the owner is responsible for under clause "Second"), and all other usual expenses paid by charterer under so-called "Government Form Time Charter," except as otherwise provided. The United States shall reimburse the owner for all income or excess profits taxes in foreign countries upon income or profits derived from the vessel and accruing to the United States.

Dunnage

Sixth. The United States shall provide the necessary dunnage and shifting boards, but the owner shall allow the United States the use of dunnage and shifting boards already on board the steamship, the United States to have the privilege of using the shifting boards for dunnage, but making good any damage thereto.

Fuel on Delivery and Redelivery

Seventh. The United States shall accept and pay for all fuel on board at the time of delivery under the Requisition Order, and the owner shall on the re-delivery of the steamship pay for all fuel left on board, at the current market price at the respective ports of delivery and re-delivery. A statement of such fuel shall be furnished forthwith by the owner to the United States for verification.

Payment of Hire

Eighth. The United States shall pay for the use of the steamship at the monthly rate which shall from time to [fol. 17] time be established by the United States Shipping Board for a vessel of her description, commencing on and from the hour that she shall be ready for delivery under the Requisition (and is so reported to the United States) and at and after the same rate for any part of a month, hire to continue until the hour at which the vessel may be ready for re-delivery at a United States port (and is so reported to the owner).

If the United States Shipping Board shall hereafter lower the rate of hire from that in effect on the date of the Requisition, the owner shall have the option of canceling this Requisition Charter as of the date of such reduction, without prejudice to the rights of either party.

Payment of hire shall be made in the District of Columbia, in cash, monthly, as earned, at the end of each calendar month. If the vessel is lost, hire shall be paid up to and including the date of her loss (if the time of her loss be uncertain, then up to and including the date she is last heard from).

Dead-weight Tonnage

Dead-weight tonnage shall be based on summer freeboard assigned or to be assigned with reference to North Atlantic service, according to the standards of any recognized classification society; proper evidence of such assignment, together with a true copy of the dead-weight scale of the vessel, shall, if possible, be furnished by the owner. Until reasonable opportunity had been afforded the owner to procure such assignment, hire shall be paid on dead-

weight tonnage as certified by the owner; any excess or deficiency in such hire to be adjusted upon subsequent determination of summer freeboard.

Classification

Ninth. A certified statement from a recognized classification society that the vessel has been classed as fit for her previous usual service shall, if obtainable at a reasonable cost, be furnished by the owner. Any alterations which are made to obtain a class for North Atlantic service which are not required to obtain a class for the vessel's previous usual service shall be made by and at the expense of the United States, but there shall be no deduction from the hire for time consumed in making such alterations. So [fol. 18] far as the exigencies of the service will permit, the owner shall do all things necessary to maintain the vessel's class.

Increase in Crew's Wages and Bonuses

Tenth. In addition to the aforesaid compensation for use of the steamship, the United States agrees to reimburse the owner for any proper increases in wages and bonuses over the standard prevailing 1 August, 1917, for master, officers, and crew, the owner to produce satisfactory evidence of such increases in wages or bonuses.

Inventory of Outfit

Eleventh. The United States shall have the use of all outfit, equipment, and appliances without extra cost, and the same or their substantial equivalent shall be returned to the owner when the vessel is re-delivered in the same or as good order and condition as when received, ordinary wear and tear and damage due to the operation of risks assumed by the owner excepted. An inventory shall be furnished forthwith by the owner to the United States for verification.

Insurance of Vessel

Twelfth. The owner shall assume the marine risks, including collision liabilities (excepting losses and liabilities arising from war risks). The United States shall assume war risks (including collision liabilities), as excluded by

the following clause in the American Hull Policy, 1916 Form: "Waranted free of capture, seizure, arrest, restraint, or detainment, or the consequences thereof, or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations, whether before or after the declaration of war."

When, however, the requisitioned vessel is used upon voyages different from those from which she has been taken and for which she was intended, and by reason thereof the owner is compelled to pay an excessive premium in the new service in which she is engaged as compared with other vessels in such service of approximately the same age, class, and value, the facts may be shown to the United States Shipping Board, and if the facts are so found, the United States will pay the excess premium, based upon value not in excess of that on which the vessel has heretofore usually been insured. The value [fol. 19] thus insured shall not be deemed in any way indicative of the just compensation to be paid in case of loss or damage due to the operation of risks assumed by the United States.

The United States also shall pay additional premium (based upon value not in excess of that on which the vessel has heretofore usually been insured) required for voyages outside the following warranties:

a. Warranted not to enter or sail from any port or ports, place or places in British North America on the Atlantic coast, except Halifax, Louisburg, and Sydney, for purpose of coaling, arming, and compulsory examination by the British Government, and not north of 50° north latitude on the Pacific coast.

b. Warranted not to enter the Baltic beyond 13° east longitude, or sail from a loading port therein between October 1 and April 1.

c. Warranted not to sail for or from any part or place on the north east of Europe between North Cape and Cape Kanin, and not to proceed east of Cape Kanin in the Arctic Ocean.

d. Warranted not to sail with Indian coal as cargo between March 1 and June 30.

e. Warranted not to sail for or from any port or place in the Bering Sea or Alaska or Siberia (except that vessels may enter or sail from Vladivostok between May 1 and November 1).

And if the vessel be seaworthy at the time of her delivery under the Requisition and at the commencement of the voyage from the United States, but subsequently becomes unseaworthy so as to constitute a breach of marine insurance warranty of seaworthiness, and such unseaworthiness be not due to or permitted to continue by the neglect or misconduct of the owner or his agents, and loss or damage ensues which is proximately occasioned by such unseaworthiness, the United States will assume such marine loss, in case the same shall be uncollectible, the extent of which shall be ascertained as of the date of such loss [fol. 20] or damage. The United States Shipping Board shall have the right to determine finally any question of fact arising under this paragraph.

Upon giving five days' written notice the United States may elect to assume all marine risks, including collision liabilities.

In the event and to the extent that the owner shall not be able to secure marine insurance from established insurance companies, at rates considered reasonable by the United States Shipping Board, the United States shall assume the marine risks, including collision liabilities, until such time as the owner shall be able to secure such insurance.

Whenever the United States assumes the marine risks, including collision liabilities, or any part thereof, a deduction which in the opinion of the United States Shipping Board represents a proper premium charge shall be made from the monthly rate of hire.

If the vessel shall be lost in a service where she may have been exposed to both war and marine risks, in the event of there being no evidence as to whether loss is due to marine or war risk, it shall be presumed to be due to war risk.

The owner shall insure against the usual protection and indemnity risks for the full protection of the owner and the United States, the expense thereof to be borne 50 per cent by the owner and 50 per cent by the United States.

Insurance of Crews

Thirteenth. Except when the vessel becomes a Public Ship, as provided in clause "Third", the owner must provide and pay for all insurance on the master, officers, and crew, as required by law; provided, however, that the United States shall reimburse the owner for all war-risk insurance, required by law, on the master, officers, and crew.

Compensation in Event of Loss or Damage. Option to Substitute Vessels.

Fourteenth. In case of loss or damage due to the operation of a risk assumed by the United States just compensasation for such loss or damage, with interest at 6 per cent [fol. 21] per annum, commencing 30 days after proof of such loss or damage, shall be paid by the United States in the District of Columbia, interest not to be paid, however, if the owner resorts to any court for the purpose of establishing the amount of the just compensation. The United States, shall, however, have the option (to be exercised with in 90 days after the date of loss or constructive loss as provided in clause "Fifteenth"), of delivering to the owner within a year after the loss, in lieu of such payment, a vessel of substantially similar tonnage, type, class, and value and of substantially no greater age (any deficiency in value to be paid for in cash), paying interest in the meanwhile from the date of loss at the rate of 6 per cent per annum on the value of the lost vessel.

Constructive Total Loss

Fifteenth. If the steamship sustains serious damage or other injury arising from the operation of a risk assumed by the United States, to such extent that the United States shall, without regard to any rule of law, consider her a total loss, the United States shall have the option (to be exercised within 90 days thereafter) of declaring the steamship to be a total loss as of the date of the damage, and of taking over or selling her, and the owner's rights as to compensation shall be the same as provided in clause "Fourteenth", interest to commence 30 days after proof of the damage.

Space and Accommodations

Sixteenth. The whole reach of the vessel's holds, decks, and other places of loading and accommodations (not to be loaded beyond what she can reasonably stow and carry) shall be at the disposal of the United States, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores, and fuel.

Duties of Master

Seventeenth. The master shall prosecute his voyages with the utmost dispatch, shall render all customary assistance with ship's crew and boats, and use all diligence in caring for ventilation of the cargo. The master shall be under the orders and directions of the United States or its nominees as regards employment or agency. The United States shall load, stow, and trim the cargo at its own [fol. 22] expense and risk under the supervision of the master, who is to have bills of lading for cargoes signed as presented, without prejudice to any term or provision of this contract, and the United States hereby agrees to indemnify the owner from all consequences or liabilities that may arise from the master's signing bills of lading or otherwise complying with the orders and directions of the United States.

Responsibility for Navigation

Eighteenth. The master shall obey all orders and instructions which he may receive from the United States or from any of its nominees, and shall in all respects comply with any confidential instructions for masters which may be issued by the United States, but he shall be the agent of the owner in all matters respecting the management, handling, and navigation of the vessel, except when the vessel becomes a Public Ship or is otherwise subject to the immediate orders of the United States in respect to such matters.

Sailing Directions

Nineteenth. The United States shall furnish the master from time to time with all requisite instructions and sailing directions, and he shall keep a full and complete log

of each voyage, which is to be patent to the United States at any time.

Complaints

Twentieth. If the United States shall have reason to be dissatisfied with the conduct of the master, officers, or any member of the crew, the owner shall, on receiving particulars of complaint, investigate the same, and if necessary make a change in the appointments. In case of an emergency not permitting of such complaint and investigation, the United States shall have power to remove the master, offcers, or any member of the crew and to appoint others in their places, but if possible the owner shall be consulted in the making of such appointments.

Supercargo

Twenty-first. The United States may appoint a representative to accompany the steamship, who shall be furnished, free of charge, with first-class accommodations, if space permits, and the same fare as provided at the captain's table.

[fol. 23]

Lapse of Hire

Twenty-second. In the event of loss of time from deficiency of men or stores, breakdown of machinery, stranding, collision, dry-docking for the purpose of examining or painting underwater parts or making any repairs, or from any other cause preventing the working of the vessel for more than 24 consecutive hours, the hire shall be reduced one-half until the vessel be again in an efficient state to resume her service; provided, however, that in case of loss of time in a port in the war zone, or at sea, due to any such cause, no such reduction shall be made if the owner shall show that he used due diligence to avoid such loss of time. Provided further, that there shall be no reduction of hire on account of loss of time arising from a war risk. Should the vessel be driven into port or anchorage by stress of weather, or from any accident to cargo, detention or loss of time occasioned thereby shall not be the cause for any cessation or reduction of hire. In any case of loss of time for which no reduction of hire is made, credit shall be given to the United States for any expenses saved by the owner during such time.

Dry-docking

Twenty-third. The steamship shall be dry-docked and her bottom cleaned and painted in the United States whenever the United States and the master think necessary, but at least once in each eight months, provided the exigency permits.

Limitation of Liability

Twenty-fourth. Throughout the period of service under this "Time Form" losses or damages arising or occasioned by the following causes shall be always excepted, viz., the act of God, perils of the seas, fire on board, in hull, craft, or on shore, barratry of the master or crew, enemies, pirates, robbers or thieves, arrests and restraints of princes, rulers, and peoples, collisions and strandings, explosions, bursting of boilers, breakage of shafts, or any latent defect (even if existing at the beginning of the voyage) but not discoverable by due diligence, in the hull, boilers, machinery, or appurtenances, negligence, default, or error in judgment of the pilot, master, or crew, or other servants of the owner, in the management or navigation of the steamship.

[fol. 24] This "Time Form" is subject to all the terms and provisions of and any or all the exemptions from liability contained in the act of Congress approved 13 February, 1893.

Gear Lights

Twenty-fifth. The owner shall provide gear for all ship's derricks, and shall maintain the gear of the vessel as fitted. The owner shall provide oil and lanterns for night work or vessel shall give use of electric lights when fitted therewith. The owner shall provide ropes, falls, slings, and blocks necessary to handle ordinary cargo up to 3 tons in weight, but at the expense of the United States.

Day and Night Work. Overtime

Twenty-sixth. The vessel shall work day and night, as required, and the steam winches shall be at the service of the United States by day and night, with full steam; whenever possible without additional expense to the owner, same to be worked free of cost by the crew. The United

States shall reimburse the owner for all overtime, provided the same be certified by the agent or nominee of the United States; or, if no agent is present, by the master, at such standard rates as may be in force from time to time.

Alterations and Vessel's Condition on Redelivery

Twenty-seventh. The United States may at any time remove or alter, at its expense, all or any of the fittings of the vessel, and may erect any new fitting which may be required to render the vessel available for service to the United States, provided that she shall, at the cost of the United States, be redelivered to the owner in the same or as good order and condition as that in which she was when delivered to the United States, ordinary wear and tear and damage due to the operation of risks assumed by the owner excepted, or just compensation for the damage thus occasioned to the vessel, with interest at 6 per centum per annum commencing 30 days after the proof of such damage upon redelivery of the vessel, shall be paid by the United States, in the District of Columbia, interest not to be paid, however, if the owner resorts to any court for the purpose of establishing the amount of just compensation.

[fol. 25]

Salvage

Twenty-eighth. All derelicts and salvage shall be for the equal benefit of the United States and the owner, after deducting all expenses incident thereto and the proportion due to the master, officers and crew.

General average

Twenty-ninth. General average, if incurred, shall be settled at New York according to York-Antwerp Rules of 1890 and Antwerp Rule of 1903, and as to matters not covered thereby according to the customs and practice of the port of New York.

Liens

Thirtieth. The United States shall have a lien on the vessel for all moneys paid and not earned or due to the owner and for all advances and overpayments made, and the United States shall have a lien on all cargoes and goods

for the payment of freights and charges, including dead freight, demurrage, forwarding charges, charges for carriage to port of shipment, and for general average claims.

Thirty-first. No Member of or Delegate to Congress, or Resident Commissioner, nor any person employed by the United States Shipping Board is or shall be admitted to any share or part of this contract, or to any benefit which may arise therefrom, but under provisions of section 116 of the act of Congress approved 4 March, 1909, this stipulation, so far as it relates to Members of or Delegates to Congress, or Resident Commissioners, shall not extend or be construed to extend to any contract made with an incorporated company for its general benefit.

Arbitration

Thirty-second. Any dispute of law or fact arising under this "Time Form", except as to the rate of hire and the compensation for actual or constructive total loss of the vessel, and except as to matters expressly left to be decided by the United States Shipping Board, shall be referred to the arbitration of three persons, one appointed by the owner, one by the United States, and the third by the two so chosen. They may proceed in any manner determined by themselves, and their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award hereunder the agreement may be made a rule of court. [fol. 26] Such arbitration shall be a condition precedent to the commencement of any action.

Special Clauses—Passenger Ships

Thirty-third. The owner of a passenger vessel shall permit the use, without extra cost therefor, of all cooking utensils and facilities already aboard the vessel, provided the same or their substantial equivalent be re-delivered to the owner in the same or as good order and condition as when received, ordinary wear and tear and damage due to the operation of risks assumed by the owner excepted. An inventory of such property shall be furnished forthwith by the owner to the United States for verification.

Thirty-fourth. The owner of a passenger vessel, if requested by the United States, whenever passengers are on

board the vessel, shall operate and maintain the saloon mess, for which the owner shall be compensated at reasonable rates to be fixed by the United States.

Thirty-fifth. The owner of a passenger vessel, if requested by the United States, shall operate and maintain a troop mess, in which the meals served shall be the equivalent of the authorized United States Army garrison ration, and for which the owner shall be compensated at reasonable rates to be fixed by the United States.

Thirty-sixth. Whenever passengers are carried (troops or others) the United States shall receive all the earnings therefrom, and pay all expenses incidental thereto which are not assumed by the owner under the other provisions of this "Time Form", including repairs and upkeep of fittings (subject to ordinary wear and tear but not breakage) and shall also furnish any additions it may require; or, in the alternative, shall make a special arrangement with the owner on a per head basis.

Special Clauses—Tankers

Tanks to be Oil Tight

Thirty-seventh. The owner guarantees that the tanks are oil tight at the time of delivery and shall take every pre-[fol. 27] caution to maintain them in this condition during the service, but shall not be responsible for leakage.

Thirty-eighth. The owner shall facilitate the discharge of oil fuel to such ships as the United States shall direct, and shall provide a Y piece with necessary reducers for each discharge up to the maximum number which can be used simultaneously.

[fol. 28] EXHIBIT C TO PETITION

Agreement made this 18th day of October, 1926, between the United States of America, hereinafter called Party of the First Part, represented by the United States Shipping Board, acting by and through the United States Shipping Board Emergency Fleet Corporation, a District of Columbia corporation, and Matson Navigation Company, a Cali-

fornia corporation, hereinafter called Party of the Second Part.

Witnesseth:

Whereas, on or about October 12th, 1927, the Party of the First Part requisitioned the steamers Enterprise, Hyades, Lurline, Manoa, Matsonia, Maui and Wilhelmina, from the Party of the Second Part, under date of December 29, 1917, the Party of the First Part and the Party of the Second Part, executed agreements covering such steamers hereinafter referred to as "Requisition Charters"; and

Whereas, each of the aforesaid Requisition Charters has terminated, and the steamers Enterprise, Hyades, Lurline, Manoa, Matsonia, Maui and Wilhelmina have been redelivered to the Party of the Second Part, and

Whereas, during the years 1917, 1918, 1919, 1920, 1921 and 1922, the Party of the Second Part managed and/or operated various vessels for the Party of the First Part, pursuant to written agreements entered into with the United States Shipping Board Emergency Fleet Corporation, Agent of the Party of the First Part, said agreements being known as "M-1", "O-1", "M-2", "O-2" and "MO-4", and

Whereas, it is the desire and intention of the parties hereto to settle and determine all matters, claims, controversies, disputes and differences arising or growing out of or in connection with the Requisitioning of said vessels, said Requisition Charters, and said agreements for the management and/or operation of vessels, except as hereinafter provided, and

Whereas, the United States Shipping Board by resolution adopted June 2, 1926, authorized settlement between the parties in the manner hereinafter set forth:

[fol. 29] Now, therefore, in consideration of the premises and of the payment by the United States Shipping Board Emergency Fleet Corporation, as Agent of the Party of the First Part, to the Party of the Second Part of the sum of One Hundred Thirty-Four Thousand Seven Hundred Twenty-Two Dollars and Sixty-Seven Cents ($134,722.67), the receipt whereof is hereby acknowledged by the Party of the Second Part, the parties hereto agree as follows:

1. The Party of the First Part does hereby covenant and agree to remise, release and forever discharge and by these

presents does for itself and its assigns, remise, release and forever discharge the Party of the Second Part, its successors and assigns, of and from all manner of controversies, claims, actions, demands, suits, damages, judgments, executions, recoveries, costs and expenses whatsoever, in law, equity and/or admiralty which against the said Party of the Second Part, its successors and assigns, it, the said Party of the First Part ever had, now has or which it or its assigns, hereafter can, shall or may have upon or by reason of any matter, cause or thing whatsoever, in any manner arising out of or in connection with the requisitioning the aforesaid vessels, said Requisition Charters and the said agreements known as "M-1", "O-1", "M-2", "O-2" and "MO-4" for the management and/or operation of vessels, except as hereinafter provided.

2. The Party of the Second Part does hereby covenant and agree to remise, release and forever discharge and by these protests does for itself and its successors and assigns remise, release and forever discharge the Party of the First Part, the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and the successors and assigns of any thereof, of and from all manner of controversies, claims actions, demands, suits, damages, judgments, executions, recoveries, costs and expenses whatsoever, in law, equity and/or admiralty which against the said Party of the First Part, the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and each of them, and the successors and assigns of any thereof, it, the Party [fol. 30] of the Second Part ever had, now has or which it or its successors and assigns hereafter can, shall or may have upon or by reason of any matter, cause or thing whatsoever, in any manner arising out of or in connection with the Requisitioning of said vessels, said Requisition Charters and said agreements known as "M-1", "O-1", "M-2", "O-2" and "MO-4", for the management and/or operation of vessels, except as hereinafter provided.

3. There is expressly excepted from the provisions of this agreement and release, and reserved to each Party hereto, any and all claims or demands either party hereto

may now have or hereafter have against the other and the successors and assigns of any thereof, arising or in any manner growing out of or in connection with additional wages and bonuses, totalling Forty-Nine Thousand Three Hundred Seventy-Three Dollars and Eleven Cents ($49,373.11), alleged to have been paid by the Party of the Second Part to the officers and crews of the steamers Enterprise, Hyades, Lurline, Manoa, Matsonia, Maui and Wilhelmina, during the periods said vessels were under said Requisition Charters.

It is expressly understood and agreed that the United States of America caused this release to be executed and delivered in reliance upon the truth and completeness of all statements, representations and claims of the said Party of the Second Part and of the attached affidavits of its Treasurer sworn to November 2nd, 1926.

[fol. 31] In witness whereof the parties hereto have caused these presents to be executed in triplicate on the day and year first above written.

United States of America, by United States Shipping Board, by United States Shipping Board Emergency Fleet Corporation, by (Signed) J. Harry Philbin, Vice-President. Matson Navigation Company, by (Signed) W. P. Roth, Vice-President.

Attest: (Signed) Samuel Goodacre, Secretary.
Attest: (Signed) F. A. Bailey, Secretary.

Approved as to Form:
(Signed) Harry Lovy, Assistant General Counsel.
(Signed) C. G. Pacbe, Assistant General Counsel.

[fol. 32] District of Columbia, ss:

Before the subscriber, a Notary Public in and for said District of Columbia, personally came J. Harry Philbin and Samuel Goodacre, whose names, as Vice-President and Secretary, respectively, of the United States Shipping Board Emergency Fleet Corporation, a District of Columbia corporation, are signed to the foregoing instrument and who are to me well known and known to me to be the Vice-

President and Secretary, respectively, of said corporation and acknowledged to me that as such Vice-President and Secretary, respectively, and in the name of said corporation, and as its act and deed and by its authority, they executed said instrument, voluntarily, for and as the act of said corporation in its representative capacity for and as the act of the United States of America; and caused to be thereto affixed the true corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal on this 19th day of November, 1926.

(Signed) Maurice J. Pierce, Notary Public

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 2nd day of November, in the year 1926, before me personally came W. P. Roth, to me known, who, being duly sworn, did depose and say that he resides in San Francisco, California, that he is the Vice-President of the Matson Navigation Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Signed) Katherine Hallahan, Notary Public. My commission expires January 28, 1930.

[fol. 33] STATE OF CALIFORNIA,
City and County of San Francisco, ss:

A. M. McCarty being duly sworn, deposes and says that he is Treasurer of Matson Navigation Company, and resides at 235-14th Ave., in the City of San Francisco, that he was Treasurer of Matson Navigation Company, between the dates 1917 and 1922, both inc., and as such became familiar with its accounts and books covering the operation of vessels under the Requisition Charters referred to in the annexed agreement and operation and management of vessels of the United States Shipping Board and/or United States Shipping Board Emergency Fleet Corporation, managed and/or operated by it under agreements in writing known as "M-1", "O-1", "M-2", "O-2" and "MO-4" during the years 1917, 1918, 1919, 1920, 1921 and 1922

that the entries in said accounts and books concerning such operations and management are true, full and complete, and that the same truly represent and reflect the transactions involved in such operations and management; that all statements, representations and claims of the said Matson Navigation Company, whether based upon such accounts and books, or otherwise, are true, full and complete. This affidavit is made for the purpose of inducing the United States of America, represented by the United States Shipping Board, acting by and through the United States Shipping Board Emergency Fleet Corporation, to make a certain settlement with said Matson Navigation Company, involving a release of the said Matson Navigation Company by the United States of America as provided in the annexed agreement dated the 18th day of October, 1926.

(Signed) A. M. McCarty.

Subscribed and sworn to before me this 20th day of November, 1926. (Signed) Katherine Hallahan, Notary Public.

[fol. 34] II. DEFENDANT'S MOTION TO DISMISS FOR WANT OF JURISDICTION—Filed by Leave of Court January 13, 1930

Comes the defendant, by its Assistant Attorney General, and respectfully moves the Court to dismiss this cause of action for the reason that this Court is without jurisdiction to hear and determine the same.

Respectfully submitted.

Charles P. Sisson, Assistant Attorney General. Dan M. Jackson, Attorney.

III. ARGUMENT AND SUBMISSION OF MOTION TO DISMISS

On December 8, 1930, the defendant's motion to dismiss for want of jurisdiction was argued and submitted by Mr. Frederick R. Conway, for the defendant, and by Mr. Gregory A. Harrison, for the plaintiff.

IV. History of Proceedings

On April 6, 1931, the court allowed the defendant's mo
tion to dismiss and dismissed the petition, with an opinio
by Whaley, J.

On May 11, 1931, the Court entered the following orde

Order

It is ordered this 11th day of May, 1931, on the court
own motion that the opinion filed in this case April 6, 193
be and the same is withdrawn, and a special finding of fa
with opinion sustaining defendant's motion to dismiss an
dismissing the petition is this day filed.

By the Cour

[fol. 35]

V. Special Finding of Fact and Opinion of the Court b Whaley, J., Sustaining Defendant's Motion to Dismiss- Filed May 11, 1931

Mr. Gregory A. Harrison for the plaintiff. Brobec
Phleger & Harrison, and Vogelsang, Brown, Cram & Feel
were on the briefs.

Mr. Frederick R. Conway, with whom was Mr. Assistan
Attorney General Charles B. Rugg, for the defendan
Messrs. Dan M. Jackson and Chauncey G. Parker were o
the brief.

This case having been heard by the Court of Claims, th
court, upon the evidence, makes the following

Special Finding of Fact

The petition was filed in the Court of Claims on April
1927. On April 7, 1927, the plaintiff filed in the Distri
Court of the United States for the Northern District o
California (Southern Division) seven separate suits agains
the United States on the seven separate requisition charter
pleaded in the petition filed in this court and known on th
docket of the said District Court as Nos. 17711, 17712, 1771
17714, 17715, 17716, and 17717. These suits were for variou
amounts alleged to have been paid to the masters, officer

and crews of the vessels requisitioned by the defendant. In three of the suits the amounts have been reduced from the amounts sued for in the Court of Claims in order to bring the suits within the jurisdiction of the District Court. These suits are now pending in the District Court.

Motion to Dismiss

The defendant moves to dismiss the petition on the ground that the Court of Claims has no jurisdiction to hear the case.

Opinion

WHALEY, Judge, delivered the opinion of the court:

This suit is brought in this court for the recovery of increased wages and bonuses paid to the masters, officers, and crews of seven vessels under requisition time charters entered into between the plaintiff and the United States Shipping Board, acting as agent for the President of the United [fol. 36] States.

The petition alleges the seven vessels were requisitioned under the authority of the act of June 15, 1917 (40 Stat. 182, C. 29), which authorized and empowered the President of the United States to requisition any vessel constructed, or in the course of construction, and to make just compensation therefor. The act further provided that the powers granted the President might be exercised through such agency or agencies as the President should determine. Pursuant to the authority conferred upon him by this statute the President promulgated on July 11, 1917, an Executive Order directing the United States Shipping Board to Exercise the powers thereby granted him.

On October 13, 1917, the President, acting through the United States Shipping Board, issued an order requisitioning on October 17, 1917, all of certain classes of American cargo ships. By the requisition order the owners were directed to continue to operate the ships in their regular trades for the account of the Government. In December following the plaintiff and the United States Shipping Board, acting as the agent of the President, agreed upon the just rate of hire to be paid and entered into seven separate requisition charters, covering the seven separate vessels. These requisition charters fixed the hire rate under a "Time form."

These seven requisitioned vessels were returned to th plaintiff during the year 1919. Settlement has been mad by the United States Shipping Board, acting as the agen of the Government, for all accounts except the alleged clai for increase in wages and bonuses. The settlement agree ment entered into on October 18, 1926, contained a reserva tion of the right to sue for the increase in wages and bonuse paid to the masters, officers, and crews of the vessels.

The plaintiff filed its petition in this court on April 1927, for the recovery of $49,373.11. On April 7, 1927, th plaintiff filed in the District Court of the United States fo the Northern District of California (Southern Division seven separate suits based on the seven separate requisitio charters mentioned and pleaded in the petition filed in thi court, the sums sued for in each suit being the amounts pai as wages and bonuses to the master, officers, and crew o each of the seven requisitioned vessels. The combine amounts do not aggregate the same amount as sued for i this court. In three of the cases the amounts have bee reduced to ten thousand dollars in order to come within th jurisdiction of the district court. These seven suits are nov pending in the district court.

The defendant, among other defenses, contends the Cour of Claims has no jurisdiction to hear the case under sectio 260, U. S. Code annotated, title 28, being Judicial Code, sec 154, which provides as follows:

"No person shall file or prosecute in the Court of Claims or in the Supreme Court on appeal therefrom, any claim fo or in respect to which he or any assignee of his has pend ing in any other court any suit or process against any perso who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or pro fessing to act, mediately or immediately, under the authorit of the United States."

This statute was adopted by Congress in the year 186 and the purpose of the act was to prevent a suit in the Court [fol. 37] of Claims when a suit is filed in a district or circuit court on the same cause of action. At that time no suit could be brought against the United States in any Federal district or circuit court, but suits could be commenced in those courts against a person "acting or professing to act, mediately or immediately under the authority of the United States," such

as the Secretary of the Treasury, a collector of customs, or one claiming to act as agent for the United States. The Court of Claims alone had jurisdiction where the United States was defendant. In 1887 Congress gave concurrent jurisdiction with the Court of Claims to the district court in claims against the United States up to a thousand dollars and to the circuit court when the amount did not exceed ten thousand dollars, 24 Stat. 505. Subsequently, the district court was given concurrent jurisdiction up to ten thousand dollars, 36 Stat. 1093.

The whole object and intent of the act of 1868 were to prevent the Government from being sued in separate jurisdictions on the same cause of action and to make the plaintiff elect in which court to sue. The act not only prohibits the filing but also the prosecution of any claim in the Court of Claims when another suit on the same cause of action is pending in another court. The seven suits in the District Court of California were filed one day after the suit was filed in this court, but the plaintiff is now attempting to prosecute the suit in this court while the suits in the district court are pending. This is prohibited under the statute. Corona Coal Company v. The United States, 263 U. S. 537.

If the Court of Claims is deprived of jurisdiction when a suit is filed on the same cause of action in another court against any person who, at the time the cause of action arose, was acting or claiming to act under the authority of the United States, a fortiori, would it be true where the suit was brought against the United States on the same cause of action in another court and also in the Court of Claims. The Government must defend the suits in two jurisdictions, and the whole aim of the statute was to prevent two trails of the same cause of action in separate jurisdictions. Having failed in one court, a plaintiff could not have a second trial in another court.

The plaintiff contends the statute does not apply because the cases in the district court are not against any person acting for the United States, but against the United States, and any judgment of this court could be pleaded in defense, res adjudicata, in the other cases. That would be true if this court rendered a judgment in plaintiff's favor, but it would not be true if the decision were adverse to the plaintiff, for

no judgment can be rendered by this court because it is deprived of jurisdiction to hear the case by the statute. There is no inhibition to the district court hearing the cases while a suit is pending in this court, and a judgment in that court could be pleaded in bar to the suit in this court. Where the court has no jurisdiction, the judgment rendered by it on the facts is a nullity and the doctrine of res adjudicata has no application. The complaint must be dismissed. It is so ordered.

Williams, Judge; Littleton, Judge; Green, Judge, and Booth, Chief Justice, concur.

[fol. 38] VI. JUDGMENT

At a Court of Claims held in the City of Washington on the 11th day of May, A. D., 1931, judgment was ordered to be entered as follows:

This case was submitted on the defendant's motion to dismiss for want of jurisdiction:

On consideration whereof the Court is of opinion that the motion is well taken.

It is therefore adjudged and ordered that the defendant's motion to dismiss be sustained and that the petition be and the same is hereby dismissed.

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,951. Court of Claims. Term No. 137. Matson Navigation Company, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed June 5, 1931. File No. 35,951.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1931

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1273)